

Shivani Plastic Co. Vs. Dvb

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SooperKanoon Citation : sooperkanoon.com/701591

Court : Delhi

Decided On : Oct-17-2003

Reported in : 2004IAD(Delhi)523; 107(2003)DLT784

Judge : R.S. Sodhi, J.

Acts : Code of Civil Procedure (CPC) - Sections 100

Appeal No. : RSA 55/2002 and CM 166/2002

Appellant : Shivani Plastic Co.

Respondent : Dvb

Advocate for Def. : Vaishalee Chaudhary and ; Yogesh Chaudhary, Advs.

Advocate for Pet/Ap. : Mahesh Mehta, Adv

Judgement :

R.S. Sodhi, J.

1. This appeal is directed against the judgment and order of the Additional District Judge, Delhi in RCA No. 97/1999 whereby the learned judge vide his judgment and order dated 11th March, 2002, has reversed the order of the Trial Court decreeing the suit of the plaintiff and restraining the DVB from disconnecting the electricity supply to the plaintiff on the basis of the inspection report dated 7th

April, 1994 and show cause notice dated 22nd February, 1994.

-2- RSA 55/2002

2. The brief facts of the case as noted by the the Additional District Judge are as follows :

' The plaintiff/respondent is a Proprietorship firm and Shri Chhagan Lal Tiwari, who is the proprietor had obtained two electricity connections being (1) No. 125230-IP and (2) No. 125229-IL installed at F-16, DSIDC Industrial Complex, Nangloi, New Delhi and had been working on the MCD license and paying all the bills regularly. The plaintiff/respondent alleged that the inspection was carried out on 7-1-94 arbitrarily setting up the load including machines, water heater which were not in existence in the premises ignoring the shunt capacitor which was installed as a necessary pre-condition to obtain sanction and also noticing alleged irregularities. Regarding the meter and seals though at the same time noticed that the C.T.Box seals, meter terminal seal, meter box seal, meter half seals were found intact and O.K. and dismaying in right direction and glass of the meter was intact and O.K. There was thus no allegations of theft and yet the plaintiff alleged that a show cause notice was issued dated 22-2-94 alleging that as per the inspection dated 7/1/94 excess load was found, no shunt capacitor was found, meter box was not fixed in proper proper position and consumption pattern did not tally with the connected load and thus there was fraudulent abstraction of energy. Reply was sent to the DVB by the plaintiff on 23-2-94. The plaintiff's case was that there was no production in the premises after 1989 and even addressed letter dated 23-2-94 issued by the Excise Office in this regard and, therefore, the electricity consumed was on the lower side. It was submitted an opportunity of being heard by personal hearing was a must before imposing of penalty and in case the DV then the DESU had accorded no personal hearing which was against natural justice. It was submitted that since 28-2-94 the DVB threatened to disconnect the supply of electricity the injunction was prayed for to restrain the DVB from acting upon the inspection report dated 7-1-94 and show cause notice dated 22-2-94.

3. The DVB in its written statement submitted that a valid inspection had been conducted on 7-1-94 which was carried out in the presence of Shri Subhash

Sharma who refused to sign the inspection report. It was submitted that connected load was found 107.652 KW against I.P. And 3.49 KW against IL connection, which was beyond the SIP category. Low power factor was also noted and MS C.T.Box cover could be lifted upward very easily without disturbing the seals as the seals provided on the meter box was acting as hinges. It was also submitted that consumption noted was very low as per connected load. It was also submitted that since the meter box could be opened without the seals being broken tapping could be done from naked leads and central wiring was accessible which clearly pointed out that there were chances of fraudulent abstraction of energy. In these circumstances the DVB prayed for the dismissal of the suit. The replication was filed refusing all these allegations and upon the pleadings of the parties the Ld.trial court framed the following issues:

1. Whether the inspection carried out by the defendant is illegal and invalid? (OPP)
2. Whether the inspection carried out by defendant is legal and as per law and the plaintiff was found to be indulging into fraudulent abstraction of energy? (OPD)
3. Whether the plaintiff is entitled to the decree for permanent injunction?
4. Relief.'

-3- RSA 55/2002

3. In order to establish its case, the plaintiff has examined Sh.Chhagal Lal Tiwari as PW-1, while DVB has examined Sh.S.K.Taneja, Superintendent as DW-1. On consideration of the evidence, the trial court concluded that the plaintiff has proved its case and therefore, decreed the suit of the plaintiff. On a re-appraisal of the material on record the first appellate court came to the conclusion that the DVB had been able to show that there was fraudulent abstraction of energy and therefore, dismissed the suit.

-4- RSA 55/2002

4. I have heard counsel for the parties and have also perused the evidence on record. I find from the statement of witnesses that the plaintiff himself put his case

to the witness DW-1 that there is every possibility of plaintiff being able to abstract electricity by fraudulent means. This case having been put by the plaintiff himself to the witness of the DVB in cross-examination must necessarily show that the electric meter installed at the premises was capable of being handled in a manner so as to bring about abstraction of energy illegally/fraudulently. As regards the inspection report itself there is an admission on the part of PW-1 that the inspection did take place but that he himself was not present at the time of the inspection, yet he says that the inspection report includes those machines and items which were not connected with the mains at that time. This witness can hardly say what was connected and what was not connected at the point of inspection since he was not present at that time. There is no real challenge to the inspection report itself. In any view of the matter, issue No. 1 dealing with whether the inspection report is illegal or invalid having been decided in favor of the DVB there can be no challenge to the consequence that would flow from the valid inspection report.

-5- RSA 55/2002

5. Having carefully examined the judgment under challenge, I am of the view that the First Appellate Court has carefully and correctly gone through the evidence on record while arriving at its conclusion. Even otherwise, the appellant has not been able to formulate question of law that needs to be adjudicated upon in Second Appellate Court under Section 100 CPC. I, therefore, uphold the judgment and order of the First Appellate Court dated 11th March, 2002, while dismissing RSA 55/2002.

-6- RSA 55/2002

6. Interim order dated 26th April, 2002 stands vacated. CM 166/2002 stands disposed of.